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OFFICE OF PETITIONS

In re Application of :
Holloway et al. : DECISION ON PETITION
Application No. 10/537,340 :
Filed: December 16, 2005 :
Title: Cards Safe :

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVIDABLY UNDER 37 CFR 1.137(a) filed November 5, 2010.

The petition under 37 CFR 1.137(a) is **DISMISSED**.

Any renewed petition must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR \$1.137(a)." Extensions of time under 37 CFR \$1.136(a) are permitted.

The above-identified application became abandoned for failure to file a reply to the non-final Office action mailed February 2, 2009. This Notice set a three (3) month shortened statutory period for reply, with extensions of time obtainable under \$ 1.136(a). No reply timely filed and no extension of time obtained, the application became abandoned effective May 3, 2009. A courtesy Notice of Abandonment was sent on September 17, 2009.

Applicants maintain that the delay was unavoidable as the Office action letter (and Notice of Abandonment) was mailed to the wrong address. Petitioner states that the request for continuing application previously filed contained a change in Power of Attorney and Change of Address form. Petitioner states that the same form requesting a change in address was filed earlier. Petitioner notes that an Official Filing Receipt for the divisional application was mailed with the correct mailing address.

A grantable petition under § 1.137(a) must be accompanied by: (1) the reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee set forth in 37 C.F.R. § 1.17(1); (3) a showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to § 1.137(d). The instant petition fails to meet requirement (3).

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' ... is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

In re Mattullath, 38 App. D.C. 497, 514-15 (1912) (quoting Ex parte Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also Winkler v. Ladd, 221 F. Supp. 550, 552, 138 U.S.P.Q. 666, 167-68 (D.D.C. 1963), aff'd, 143 U.S.P.Q. 172 (D.C. Cir. 1963); Ex parte Henrich, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case

basis, taking all the facts and circumstances into account." Smith, 671 F.2d at 538, 213 U.S.P.Q. at 982. Nonetheless, a petition cannot be granted where a Applicants has failed to meet his or her burden of establishing that the delay was "unavoidable." Haines, 673 F. Supp. at 316-17, 5 U.S.P.Q.2d at 1131-32.

The facts and circumstances of the abandonment of this application have been considered. And, it is concluded that Applicants have not met their burden of establishing unavoidable delay. A Request for Withdrawal as Attorney or Agent and Change of Correspondence Address was filed on June 28, 2007. The request was approved by decision mailed November 5, 2007; however, the request to change correspondence address was found not to be acceptable. The correspondence address was changed to that of the first named inventor. This address was used in the mailing of the non-final Office action mailed February 2, 2009.

A thorough review of the record reveals that a change of address from that of the first named inventor was not warranted. No proper change of address is of record in this application. The papers received in the Office on October 6, 2008 included a request for continuing examination, but did not include a change of correspondence address as asserted by petitioner. Further, a change of address filed in a continuing application is not effective to change the address in the parent application. Most importantly, a review of the copy of the power of attorney and correspondence address indication form, which was received in the Office on December 27, 2007, reveals that the form was not proper to change the correspondence address. Specifically, the form was solely signed by inventor Trond Rornes as company secretary. However, the request did not include the 3.73(b) statement necessary for an assignee to take such action. To establish authority to take action in application, an assignee must both show their ownership interest and that the person signing the form has authority to act on behalf of the assignee. In this instance, it could be presumed that as company secretary inventor Rornes has such authority. However, assignee has not established their ownership interest and such cannot be presumed. See MPEP 324. In view thereof, a power of attorney and correspondence indication form as the one provided on petition is not effective to change the correspondence address of record in this application.

Accordingly, the petition must be dismissed.

Applicants are not precluded from seeking revival based on unintentional delay. Applicants are reminded that any delay in filing a petition will be considered in the determination of whether the entire delay was unintentional.

A courtesy copy of this decision is being mailed to the address set forth on the petition. All future correspondence will be mailed to the correspondence address of record until such time as a proper change of correspondence address is filed in this application.


Further correspondence with respect to this decision should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By fax: (571) 273-8300
 ATTN: Office of Petitions

By hand: Customer Service Window
 Randolph Building
 401 Dulany Street
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Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3219.



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